

A RESOLUTION

02- -1533

BY EXECUTIVE /FINANCE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN ENCROACHMENT AND EASEMENT AGREEMENT WITH W. JAMES BUZBEE FOR THE PURPOSE OF ALLOWING CERTAIN ENCROACHING IMPROVEMENTS AT THE CITY'S FIRE STATION NUMBER 13, IN THE VICINITY OF 447 FLATSHOALS AVENUE, S. E., TO CONTINUE TO ENCROACH ON PROPERTY LOCATED IN THE VICINITY OF 457 FLATSHOALS AVENUE, S.E.; AND FOR OTHER PURPOSES.

WHEREAS, Fulton County (the "County") owns property located in Land Lot 177 of the 15th District, DeKalb County, at 457 Flatshoals Avenue, S.E. in Atlanta on which the East Atlanta Library IS situated (the "Grantor Property"); a legal description of the Grantor Property is attached hereto, incorporated herein by reference, and made a part hereof as Exhibit "A"; and

WHEREAS, the City of Atlanta (the "City") owns property located in Land Lot 177 of the 15th District, DeKalb County, at 447 Flatshoals Avenue, S.E. in Atlanta on which City Fire Station Number 13 (the "Grantee Property") is situated; and

WHEREAS, the Grantor Property and the Grantee Property are contiguous, sharing a boundary in common as more particularly shown in the survey diagram prepared by HDR/WL Jorden and Commonwealth Land Title Insurance Company, an excerpt of which is attached hereto, incorporated herein by reference, and made a part hereof as Exhibit "B"; and

WHEREAS, the County is preparing to swap the Grantor Property where the current East Atlanta Library sits for land owned elsewhere by W. James Buzbee (the "Buyer"); and

WHEREAS, the survey discloses an encroachment by certain improvements of the City on the Grantee Property onto the Grantor Property that include, among other things, a four-foot high chain-link fence and a concrete driveway (the "Encroaching Improvements"); the portion of the Grantor Property onto which the Encroaching Improvements encroach is referred to as the Encroachment Area; and

WHEREAS, the Encroaching Improvements exist for a public purpose and have existed on the Encroachment Area for some time with the acquiescence and approval of the County; and

WHEREAS, the Buyer, W. James Buzbee, and the City now wish to confirm the consent and approval for the Encroaching Improvements and to provide for an easement with respect thereto and consistent with the terms of the Agreement attached hereto, incorporated herein by this reference and made a part hereof as Exhibit "C"; and

WHEREAS, the Bureau of Purchasing and Real Estate of the City recommends that this transaction is in the best interest of the City.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Atlanta as follows:

Section 1: That the Mayor, with the assistance of the Bureau of Purchasing and Real Estate, is authorized to accept on behalf of the City a non-exclusive Easement for Access over, upon, and across the Encroachment Area for the purpose of: (a) obtaining access to and from the improvements existing on the Grantee Property and the public street presently known as "Flat Shoals Avenue" via the driveway serving such improvements and (b) repairing and maintaining the Encroaching Improvements.

Section 2: That in consideration of Ten Dollars (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the Mayor be and is hereby authorized to execute an Encroachment and Easement Agreement on behalf of the City which is substantially in the form of that which is attached hereto.

Section 3: That the Easement obtained by the City shall run with, bind, and benefit the land described herein and the Easement shall terminate upon the sooner to occur of the following: (a) the date on which the Grantee Property is no longer used as a fire station (including the housing of emergency fire response vehicles) or (b) the date on which the existing improvements on the Grantee Property are either demolished or substantially remodeled, whether for a new or substantially remodeled fire station or for any other purpose.

Section 4: That all Resolutions or parts of Resolutions in conflict herewith are hereby rescinded.

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 177, 15th District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at the intersection of the southerly right of way line of Metropolitan Avenue (50-foot right of way) and the westerly right of way line of Flat Shoals Avenue (apparent 56-foot right of way); run thence along said westerly right of way line of Flat Shoals Avenue South 37 degrees 33 minutes 17 seconds East a distance of 49.87 feet to a point and THE TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED, continue thence along said westerly right of way line South 37 degrees 33 minutes 17 seconds East a distance of 133.89 feet to a pk nail found; leaving said westerly right of way line, run thence South 73 degrees 10 minutes 39 seconds West a distance of 124.61 feet to a 5/8-inch rebar found; run thence North 15 degrees 11 minutes 42 seconds West a distance of 125.30 feet to a point; run thence North 73 degrees 12 minutes 06 seconds East a distance of 73.65 feet to a point on the westerly right of way line of Flat Shoals Avenue and THE TRUE POINT OF BEGINNING; shown as containing 0.2850 acres on that plat of survey entitled "ALTA/ACSM Land Title Survey of 457 Flat Shoals Avenue for W. James Buzbee and Commonwealth Land Title Insurance Company", prepared by HDR/WL Jorden, bearing the seal and certification of Bryant G. Kachel, Georgia Registered Land Surveyor No. 2700, dated May 21, 2002, last revised June 27, 2002.

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EXHIBIT B

FLAT SHOALS AVE. (5

METROPOLITAN AVENUE (50' R/W)

POINT OF
COMMENCEMENT

POINT OF BEGINNING

S37°33'17"E
49.87'
(50' PLAT)

CONC. DRIVE
(75' +/- PLAT)

FIRE STATION

FULTON COUNTY
ZONED NC-1

N73°12'06"E 73.85'

PAVERS (GROWN OVER)

FULTON COUNTY
PUBLIC LIBRARY
(FKA) CITY OF
ATLANTA PUBLIC
LIBRARY

125.30' (121' +/-)
N15°11'42"W

10'

ALLEY

CONC. WALK

6" CHAINLINK FENCE

CONCRETE DRIVE
ENCROACHES INTO
SUBJECT PROPERTY

CHAIN LINK FENCE

CONC. WALK

COVERED
SIDEWALK

COVERED ENTRANCE

CONC. WALK

PAVERS
LANDSCAPING

ONE STORY
BRICK BUILDING
457 FLAT SHOALS AVE.

AREA 12,414 SQ. FT.
OR 0.2850 ACRES

S37°33'17"E
133.89' (134.3' PLAT)

After recording, return to:
David N. Heaton, Esq.
Parker Hudson Rainer & Dobbs LLP
1500 Marquis Two Tower
285 Peachtree Center Avenue, N.E.
Atlanta, Georgia 30303

ENCROACHMENT AND EASEMENT AGREEMENT

THIS ENCROACHMENT AND EASEMENT AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2002, by and between W. JAMES BUZBEE, a resident of the State of Georgia ("Grantor"), and the CITY OF ATLANTA, GEORGIA, a political subdivision of the State of Georgia ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real property located in Land Lot 177 of the 15th District, DeKalb County, Georgia, being more particularly described on Exhibit A attached hereto and made a part hereof by this reference (herein referred to as the "Grantor Property"); and

WHEREAS, Grantee is the owner of that certain real property located in Land Lot 177 of the 15th District, DeKalb County, Georgia, being more particularly described on Exhibit B attached hereto and made a part hereof by this reference (herein referred to as the "Grantee Property"); and

WHEREAS, the Grantor Property and the Grantee Property are contiguous, sharing a boundary in common as more particularly shown on that plat of survey, dated June 27, 2002, prepared by HDR/WLJorden for Grantor and Commonwealth Land Title Insurance Company, bearing the stamp of Bryant G. Kachel, Georgia Registered Land Surveyor No. 2700 (the "Survey") (a copy of a portion of said Survey being attached hereto as Exhibit C); and

WHEREAS, the Survey discloses an encroachment by certain improvements of Grantee onto the Grantor Property as follows: (a) a four-foot (4') high chain-link fence 3.5 feet inside the northern boundary of the Grantor Property, running the length of such boundary and (b) a portion of the concrete drive servicing Grantee's building, initially 1.1 feet inside said northern boundary and then widening to a larger area of encroachment, all as more particularly depicted on the Survey (collectively, the "Encroaching Improvements"; the portion of the Grantor Property onto which the Encroaching Improvements encroach being referred to herein as the "Encroachment Area");

WHEREAS, Grantor and Grantee desire to confirm the consent for the Encroaching Improvements and to provide for an easement with respect thereto as provided herein;

NOW, THEREFORE, for and in consideration of \$10.00, in hand paid by Grantee to Grantor, the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties hereto hereby agree as follows:

1. Consent to Encroachment. The parties hereby acknowledge the existence of the Encroaching Improvements, and acknowledge and confirm that the Encroachment Area as depicted on the Survey is part of the Grantor Property. To the extent of any interest or title therein, Grantee hereby releases the same unto Grantor with respect to any portion of the Encroachment Area. Grantor hereby consents to the presence of the Encroaching Improvements in accordance with the terms and conditions of this Agreement. So long as this Agreement remains in effect, the Encroaching Improvements shall not be deemed to constitute a trespass or other unauthorized entry or intrusion onto the Grantor Property. Neither Grantor's consent under this Section 1 nor the easement provided for in Section 2 below shall be deemed, either expressly or implicitly, to extend or otherwise authorize any other encroachment or intrusion onto the Grantor Property by any other facility or improvement or to authorize any extension or expansion of the Encroaching Improvements or the Encroachment Area. The consent and easement set forth herein pertain solely to the Encroachment Area and Encroaching Improvements in existence on the date of this Agreement.

2. Easement for Access. Grantor does hereby grant, for the benefit of and as an appurtenance to the Grantee Property a non-exclusive easement over, upon and across the Encroachment Area (and only the Encroachment Area) for the purposes of: (a) obtaining access to and from the improvements existing on the Grantee Property on the date hereof and the public street presently known as "Flat Shoals Avenue" via the existing driveway serving such improvements and (b) repairing and maintaining the Encroaching Improvements. The grant herein is and shall be subject to any and all title matters of record on the date of this Agreement.

3. Duration. The provisions of this Agreement shall run with, benefit and bind the land described herein. The provisions of this Agreement, and the consent and easement granted herein, shall terminate upon the sooner to occur of the following: (a) the date on which the Grantee Property is no longer used as a fire station (including the housing of emergency fire response vehicles) or (b) the date on which the existing improvements on the Grantee Property are either demolished or substantially remodeled, whether for a new or substantially remodeled fire station or for any other purpose. This termination shall be self-executing without the necessity of the execution or recordation of any additional documentation; provided, however, that following the occurrence of either of the foregoing termination events, Grantee agrees to deliver to Grantor, within 45 days after Grantor's written request therefor, a written confirmation, in recordable form, that this Agreement has terminated. If Grantee fails to provide such instrument to Grantor within such 45-day period, Grantor may record in the real property records of DeKalb County, Georgia an affidavit confirming the termination of this Agreement.

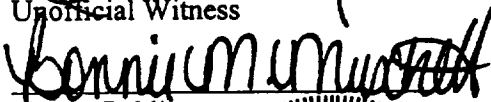
4. General Provisions. This Agreement shall be binding upon and shall inure to the benefit of the owners of the Grantor Property and the Grantee Property and their respective successors, successors-in-title, legal representatives and assigns. This Agreement shall be governed in accordance

with the internal laws of the State of Georgia. This Agreement may be amended, modified or terminated only in writing, executed and acknowledged by the owner of the Grantor Property and the owner of the Grantee Property at the time of such amendment or termination.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

Signed, sealed and delivered
in the presence of:


Unofficial Witness


Notary Public

Commission Expires
Date: _____



GRANTOR:


W. JAMES BUZBEE

[SIGNATURES CONTINUED ON
FOLLOWING PAGE]

[CONTINUATION OF SIGNATURES TO ENCROACHMENT AND EASEMENT AGREEMENT]

ATTEST:

CITY OF ATLANTA

Municipal Clerk (Seal)

Mayor

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

[NOTARIAL SEAL]

APPROVED AS TO FORM:

APPROVED:

Senior Assistant City Attorney

Chief Financial Officer

RECOMMENDED:

Director, Bureau of Purchasing



CITY OF ATLANTA

SHIRLEY FRANKLIN
MAYOR

DEPARTMENT OF LAW
68 MITCHELL STREET, S.W.
SUITE 4100
CITY HALL TOWER
ATLANTA, GEORGIA 30303-3520
(404) 330-6400 TELEPHONE
(404) 658-6894 FACSIMILE

LINDA K. DISANTIS
CITY ATTORNEY

MEMORANDUM

To: Larry Stokes, Legislative Policy Analyst, Finance/Executive Committee

From: Jerolyn Webb Ferrari, Senior Assistant City Attorney *JWF*

Re: Legislation authorizing Easement and Encroachment Agreement for Fire Station at 447 Flat Shoals Avenue, S.E., Atlanta, GA 30316

Date: August 30, 2002

Enclosed is the legislation for the Easement and Encroachment Agreement at the above referenced location.

cc: Felicia Strong-Whitaker, Purchasing Agent
Joan Leavell, Asst. Director, Real Estate Division